

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

MIDBROOK, INC.

and

CASES 7-CA-47972
7-CA-48172

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW),
AFL-CIO

Donna M. Nixon, Esq., for the Government.¹

Anthony J. Chandle, Representative,
for the Union.²

Kurt N. Sherwood, Esq., for the Company.³

DECISION

Statement of the Case

WILLIAM N. CATES, Administrative Law Judge. I heard this case in trial in Jackson, Michigan, on April 12, 2005. The case originates from charges, filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (Union) on October 8, 2004, in case 7-CA-47972⁴ and on December 16, 2004, in case 7-CA-48172⁵ against Midbrook, Inc., (Company). The prosecution of these cases was formalized on February 14, 2005, when the Regional Director for Region 7 of the National Labor Relations Board (Board), acting in the name of the Board's General Counsel, issued an Order Consolidating Cases, Consolidated Amended Complaint and Notice of Hearing (complaint) against the Company.⁶

The complaint, as amended, alleges the Company has, since late September through November 14, 2004, interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, as amended (Act) thus

¹ I shall refer to Counsel for General Counsel as the Government.

² I shall refer to the Charging Party as the Union.

³ I shall refer to the Respondent as the Company.

⁴ This charge was amended on November 3, and December 9, 2004.

⁵ This charge was amended on February 10, 2005.

⁶ At trial the Government was granted permission to amend the complaint in certain minor respects.

violating Section 8(a)(1) of the Act. Specifically it is alleged the Company, by its supervisors and/or agents, told employees it was disappointed in them with respect to their activities on behalf of the Union and that they should make this all go away; solicited grievances from employees and promised to remedy them; interrogated employees with respect to their sentiments towards the Union; confiscated Union literature from an employee's tool box; threatened to discipline an employee with respect to his concerted protected activity and/or his contact with the Union; and, surveilled employees gathered for a Union meeting. It is also alleged the Company in late September and on November 12, 2004, took actions in regard to the hire, tenure or terms and conditions of employment of its employee Gilbert Ramirez (Ramirez) thereby discouraging his membership in a labor organization in violation of Sections 8(a)(1) and (3) of the Act. Specifically it is alleged that in late September 2004, the Company removed Ramirez from conducting the Friday 50/50 raffle; on November 12, 2004, removed Ramirez from his team leader position; and, gave him a negative performance evaluation.

The Company, in its timely filed answer to the complaint, acknowledged it is an employer engaged in commerce within the meaning of the Act and is subject to the Board's jurisdiction. The Company denies having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified. I have studied the whole record, the parties' briefs, and the authorities they rely on.

Findings of Fact

I. Jurisdiction; Labor Organization Status; and, Supervisor/Agency Status

The Company is a corporation with an office and place of business in Jackson, Michigan, where it is, and has been, engaged in the manufacture and sale of industrial parts washing machines. During the calendar year 2004, a representative period, the Company derived gross revenues in excess of \$500,000 and purchased and received at its Jackson, Michigan, location goods and materials valued in excess of \$50,000 directly from points outside the State of Michigan. The evidence establishes, the parties admit and I find, the Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The parties admit and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

Company President/Owner Milton Lutz, Plant Manager Ernie Houghton, Laser Foreman Ray Cole, TBH Foreman Charles Loveless, Bench Fab Foreman John Stuart and Foremen John Schanz, Chris Rose and Brian Rockwell are supervisors of the Company within the meaning of Section 2(11) of the Act. Labor Consultants Lizabeth Casale and Phil Craft are agents of the Company within the meaning of Section 2(13) of the Act.

II. Alleged Unfair Labor Practices

A. Interference, Soliciting Grievances and Interrogation

It is alleged at paragraphs 8, 9 and 10 of the complaint that about late September 2004, the Company, by its agent Labor Consultant Lizabeth Casale, at its Jackson, Michigan facility, interfered with employees with respect to their activities on behalf of the Union by: telling employees the Company was disappointed in them and they should make this go away; soliciting grievances from employees and, by its President Milton Lutz, promising to remedy them; and, interrogating employees with respect to their sentiments towards the Union.

1. Facts

Eric Waldron, a six year steel fabricating employee, testified that in late 2004, Labor Consultant Casale approached him while alone on the shop floor. Waldron testified Casale “asked me to list my likes and dislikes of the Company, and she wanted to know what could be changed to make it a better workplace.” Waldron responded to Casale and she told him the information would be given to Company President Lutz. According to Waldron, Casale said Company President Lutz would meet later with the employees to discuss the analysis of her final report.

Charlene Godbold, an eight year welding employee, testified she met voluntarily with Labor Consultant Casale in late 2004. Casale told Godbold she was “getting information to up morale and production in the shop.” Casale wanted to know “if there was anything in particular that ...needed to be addressed.” Godbold told Casale a couple of things but could not recall what they were. According to Godbold, Casale indicated she would be giving all the information she gathered to Company President Lutz, “so he could evaluate it and go through it and see where the problems were.”

Ten year metal fabricator Ivan Webb testified Labor Consultant Casale spoke with him alone in the shop in late September or early October 2004. Webb said Casale explained she was a labor consultant who was not on either side that “she just was taking a list of all the concerns around the floor and around the shop and was going to turn them all in and see if there was something ... they could work on to make things better.” Webb told Casale he thought benefit take-a-ways and favoritism were problems or concerns for the shop employees.

Eleven year machine builder Ramirez testified he spoke with Labor Consultant Casale alone one morning at his machine. Ramirez said that after some small talk Casale told him she worked for a consulting company and was trying to find out what might be wrong in the shop. Ramirez testified, “at that time I let her know I was 100 percent union.” Ramirez told Casale there were lots of problems in the shop but specifically mentioned favoritism. Ramirez said Casale wrote down everything he was concerned about and stated Company management would get a consolidated report on the employees’ concerns.

Ramirez, Ivan Webb, Godbold and Waldron each testified Company President Lutz spoke with employees, in groups of approximately 30, at mandatory meetings regarding the information Labor Consultant Casale had provided management based on her meetings with employees. Other management officials present at the meetings were Todd Lutz, Aileen Lutz, and Plant Managers Ernie and Joanne Houghton. Company President Lutz explained, according to Ramirez, “he was going over 16 pages of our concerns and that there were things in there that he intended on working on and there was things in there that he had no intentions on working on.” Ramirez testified Company President Lutz indicated he would look at the safety concerns but would not reinstate the five minute clean-up time previously allowed before lunch and at quitting times. Lutz promised to turn down the volume of the break buzzer in the shop and announced a 4.2 percent raise for the employees. Waldron testified Company President Lutz promised to be out on the shop floor to observe more.

Ivan Webb testified Labor Consultant Casale interviewed him a second time after Company President Lutz spoke about the employees’ concerns. Casale asked Webb what he thought about Lutz’s meeting. Webb told Casale it was a little too late and he was going with the flow.

Ramirez testified Labor Consultant Casale talked with him sometime in November 2004, and asked what he thought of Company President Lutz’s meeting with the employees. Ramirez told Casale “I was really happy that I got paid for it because it was a waste of my F-ing time to hear that.” Ramirez said, he “was really upset” and Casale asked if he didn’t think the Company deserved a second chance. Ramirez said no. He explained that a lot of employees had not gotten a second chance and gave her names of those he said were no longer working for the Company simply for standing up for what they believed in. Ramirez testified Casale said, “a lot of people were ... real disappointed in me for being involved and that I’m a highly influence (sic) person on the floor and that I could make all this go away.” Ramirez told Casale he would rather die.

Casale testified she has worked as a consultant for Craft-Barresi Consultants for 18 years. Casale stated her company does employee relations and communication surveys, labor relations surveys, training, handbook preparations, contract negotiations and retirement training. The Company herein retained Casale’s company and she first came to the Company herein on September 27, 2004. Casale explained she did a communications survey. Casale testified, “I went out onto the floor, the production floor, the office area, and interviewed everyone with regards to improving communications.” Casale said she explained to each employee she was taking a voluntary communication survey and each employee was free to speak or decline to speak with her. Casale advised each employee she was taking notes, “so that any information that you wish to share I’m writing down.” Casale denied interrogating anyone or soliciting anything from any employee explaining that her meetings with employees were voluntary encounters.

Casale specifically denied saying to Ivan Webb words to the effect that she was there to help the Company make things better for the employees. Casale likewise denied telling Webb that she would help the Company see what could be done about the issues the employees raised. Casale denied telling employee Waldron words to the effect that she was

there to help the Company see what could be changed to make things better. Casale testified that in her years of doing survey work she was aware of what she could and could not say. Casale said she knew that telling an employee the Company was disappointed in him and that he could make the whole thing go away was something she could not and did not say in her interviews and specifically denied making any such comment to Ramirez.

On cross-examination Casale acknowledged she asked employees about their concerns and that they reported concerns about safety, raises, a management home in Hawaii and a variety of other matters. Casale was fully aware of the Union's organizing campaign at the time she conducted her interviews.

Company President Lutz testified that a few days after he received Casale's report he met with the employees in groups of approximately 30 to 50. Lutz conducted the meetings one right after the other and each meeting was conducted the same. Lutz said he gave a bit of the history of the Company and how it had gotten to where it was. Lutz testified:

By that time it was obvious that there were people in the Company that were unhappy about different things. The majority of the things they were unhappy with was what they referred to as a lack of communication.

Lutz testified he prided himself on the fact the Company was a family but concluded he had failed to communicate that to the employees. Lutz said he was aware, from his consultants, there were things he could and could not do or say at the meetings. Lutz denied making any specific promises to the employees but acknowledged he told them he would work on improving communication. Lutz said he always spent time on the shop floor and the Company had a "total open door policy."

It is undisputed the Company brought in Craft-Barresi Consultants to assist it, at least in part, in improving communication between the Company and its employees. It is undisputed Consultant Casale first arrived at the Company on September 27, 2004. Casale interviewed each employee, took notes and made a detailed report of her findings to management. Casale acknowledged she asked employees about their concerns. She learned their concerns involved safety, pay raises, favoritism and other matters. Casale was aware of the Union's organization campaign at the time she conducted the interviews.

The law is firmly established regarding soliciting employee concerns and grievances. In the absence of evidence showing such a previous practice, the solicitation of grievances during an organizing campaign accompanied by a promise, express or implied, to remedy such grievances violates the Act. Moreover, the solicitation of grievances in the midst of a union campaign inherently constitutes an implied promise to remedy the grievances, although this inference is rebuttable. An employer may rebut by showing a legitimate business justification for the challenged matter. *Waste Management De Puerto Rico*, 339 NLRB 262, 268 (2003).

Prior to the advent of the Union there is no showing the Company had previously brought in an outside consulting firm to assist it in finding out the concerns of its employees.

Labor Consultant Casale admits she solicited the concerns of each employee and told each employee she would be reporting the employees' concerns to management. The survey of concerns was conducted at the beginning of the employees' efforts to unionize. Implied in Casale's statements, that she would make a detailed report to management about the employees' concerns, was that something would be done regarding their concerns.

Company President Lutz acknowledged he reviewed the report provided by Labor Consultant Casale before meeting with all the employees regarding the report. It is clear Lutz promised better communication between management and the employees. Lutz described what he learned, in part, from the report was "[t]he majority of the things they were unhappy with was what they referred to as a lack of communication." Company President Lutz indicated he would look into the safety concerns and buzzer volume level. A pay raise was also announced at the meeting.

I find as alleged at paragraph 9 of the complaint that the Company, through Labor Consultant Casale solicited grievances from the employees and Company President Lutz promised to remedy such grievances in violation of Section 8(a)(1) of the Act. I reject the Government's contention that when Casale approached the employees during their working time, with Company approval, and solicited their grievances she coercively interrogated employees about their terms and conditions of employment. While she was soliciting employees' concerns Casale may have questioned the employees but such inextricably intertwined questioning does not constitute a separate independent coercive interrogation type violation of the Act. I shall dismiss the allegation at paragraph 10 of the complaint that Casale interrogated employees with respect to their sentiments toward the Union.

It is undisputed that Labor Consultant Casale and Ramirez spoke alone on the work floor. Ramirez asserts Casale asked him in November, what he thought of Company President Lutz's speech to the employees. Ramirez testified he told Casale he was happy he was paid to attend the meeting because it was "a waste of my F-ing time" and that he was "really upset." Ramirez said he told Casale the Company did not deserve a second chance. Ramirez testified Casale told him that a lot of people were disappointed in him for being involved and that he was a highly influential person who could make all this go away. Labor Consultant Casale testified she knew what she could and could not say to employees and specifically denied telling Ramirez, the Company was disappointed in him and that he could make all this go away. I do not credit Ramirez uncorroborated testimony on this point. Ramirez impressed me as a person who believes deeply in the causes he attempts to advance be it a raffle to raise funds for charity or to organize his fellow workers. He also impressed me as a temperamental individual, that is, one who admittedly gets excited and angry and sometimes uses profane language, such as the "F" word, to express himself when conversations he is involved in gets heated. I am persuaded something, perhaps his enthusiasm for the causes he advances, makes him unwilling or unable to recall events or conversations accurately. Simply stated after carefully observing Ramirez testify, and taking the above observations into consideration, I am unwilling to rely on or accept unsupported and/or uncorroborated testimony of Ramirez. I credit Labor Consultant Casale's testimony that she never told Ramirez the Company was disappointed in him and that he could make this whole thing go away. Accordingly, I shall dismiss paragraph 8 of the complaint.

B. Confiscation of Union Literature

It is alleged at paragraph 11 of the complaint that about early October 2004, the Company, by Bench Fab Foreman John Stuart, at its Jackson, Michigan facility, confiscated Union literature from an employee's tool box.

I. Facts

Employee Ivan Webb testified that on an occasion in the fall of 2004, he and Ramirez handed out union fliers before work at a Company gate and planned to do so again at noon that same day. They placed some extra union fliers behind a vertical rod on employee Zack Lumbard's personal tool box for safe keeping. Webb noticed Bench Fab Foreman Stuart watching as they did so. Webb spoke to Stuart. At the morning employee break, Webb and Ramirez learned Lumbard never got the union fliers. At lunch Webb and Ramirez saw Foreman Stuart. According to Webb, Ramirez asked Stuart if he had taken the literature from employee Lumbard's tool box. Stuart responded, "you're darn right I did." Ramirez corroborated Webb's testimony.

Bench Fab Foreman Stuart testified that in early October 2004 before the work day started he saw employees Ivan Webb and Ramirez "cut through" his area as he was "walking around my area cleaning up." Stuart saw some papers on the floor and on Lumbard's tool box. Stuart said he picked up the papers from the floor in front of Lumbard's toolbox box and removed some from behind a bar holding the papers to Lumbard's toolbox. Stuart testified he took the papers from behind the bar on the tool box because he assumed they were union papers although he did not read them. Stuart said it was his practice to pick up stuff from the shop floor and throw it away.

2. Discussions Analysis and Conclusion

The facts relating to the throwing away of the union literature are not in dispute. Employees Ivan Webb and Ramirez placed some union literature behind a bar on employee Lumbard's personal tool box for use later that morning. Bench Fab Foreman Stuart observed this and admitted removing the literature from behind the bar on employee Lumbard's personal tool box because he assumed the literature was union papers. I find, as alleged in the complaint at paragraph 11, that this constitutes an unlawful seizure of union literature in violation of Section 8(a)(1) of the Act. It is no defense for the Company that Stuart normally cleaned up around his area of responsibility. First, this normal clean up would not require him to remove union literature secured to a personal tool box. Second, Stuart removed the literature specifically because he assumed it was union literature not for the purpose of cleaning up the work area.

C. Surveillance at the Union Hall

It is alleged at paragraph 12 of the complaint that about October 3, 2004, the Company, by Laser Foreman Ray Cole, surveilled employees gathered for a meeting of the Union at the Union's hall in Jackson, Michigan.

1. Facts

A union meeting was held at the Union hall in Jackson, Michigan on Sunday, October 3, 2004. Ann Webb accompanied her husband employee Ivan Webb to the Union hall. Ann Webb waited in the Union's parking lot located on South Street in Jackson, Michigan, while her husband attended the Union meeting. Ann Webb observed a green mini-van in the back portion of the parking lot for maybe one or two minutes. Ann Webb had seen the mini-van on many occasions and knew it belonged to Laser Foreman Cole. Ann Webb testified she saw someone in the mini-van but did not see who it was. As she was noticing the mini-van drive away her husband and Ramirez came out of the Union hall and walked toward where the mini-van was.

Ramirez testified that approximately halfway through the Union meeting he noticed a vehicle in the back part of the Union's parking lot. Ramirez left the meeting to confront whoever was there. He was followed by employee Ivan Webb. Ramirez recognized the mini-van as one belonging to Laser Foreman Cole's wife but he did not see who was driving the van.

Ivan Webb testified that the next day, Monday, October 4, 2004, Laser Forman Cole approached him at work and asked if Webb's family was in the Union's parking lot the day before. Webb acknowledged it was and Cole asked if Ramirez knew he, Cole, was there. Cole also told Webb he was there for his own benefit.

Ramirez testified Cole approached him on Monday morning and asked if Ramirez saw him at the Union's parking lot. Ramirez replied, "you're dam right I saw you, Ray." Ramirez asked Cole, "What the F he was doing there because he had no business being there." Ramirez provided Cole a union pamphlet. Cole said he was only there for his own curiosity. According to Ramirez, he and Cole talked about the "rights" and "wrongs" of Cole's being at the Union hall and whether he was there out of curiosity or for some other reason. Ramirez told Cole how dissatisfied he was with Cole's decision to be there. Ramirez said they ended their conversation with Cole stating business was business and friends were friends.

Laser Foreman Cole testified he learned on Friday, there was going to be a meeting on Sunday, October 3, 2004, at the Union hall. Cole testified, "it surprised" him so he, "thought ... [he would] drive by and just see how many people are really interested in this thing." Cole stated he was on his way back from a Sunday event with his son when he drove down behind the Union hall and: "I stopped, I backed into the driveway and left. I looked in the parking lot to see how many people were there. That's all there was to it, no more than that, and I did see the guys [Ivan Webb and Ramirez] come out in the parking lot." Cole estimated the entire visit took a couple of minutes. Cole said he took no pictures wrote nothing down nor reported anything of his visit to other managers.

Cole testified that the next day at work he spoke with Ivan Webb and Ramirez telling them he had made a mistake being at the Union hall that he meant no harm that he was just

trying to see how many people were interested in the Union for his own benefit. Cole said both let him know it was wrong for him to have been there.

2. Discussions Analysis and Conclusion

It is clear that Laser Foreman Cole deliberately went to the Union hall on Sunday, October 3, 2004, for the express purpose of seeing “how many people are really interested in this thing [Union].” Cole even told employees the next day he meant no harm he was just trying to see how many people were interested in the Union for his own benefit. The actions of Cole constitute unlawful surveillance of the employees protected conduct and violates Section 8(a)(1) of the Act and I so find. It is no defense to the Company that Laser Foreman Cole was not authorized by the Company to make the visit to the Union hall or that he did it for his own curiosity. It is well settled that a supervisor’s knowledge of union activities is imputed to the employer. In addition an employer is bound by the acts of its supervisors whether specifically authorized or not. See e.g., *Dobbs International Services*, 335 NLRB 972, 973 (2001).

D. The Friday 50/50 Raffle

It is alleged at paragraph 16 of the complaint that about late September 2004, the Company by Plant Manager Houghton and TBH Foreman Loveless, removed employee Ramirez from conducting the Friday 50/50 raffle.

1. The Facts

Ramirez testified his immediate supervisor lost a daughter to breast cancer. That supervisor joined a “Relay For Life Walk” in support of breast cancer research which required a \$100 donation to participate. Ramirez testified that after that; “[w]e thought it would be a good way to make some money. So we started the Friday 50/50 drawing, bought tickets, a bucket and just went person to person and collected money each week for this cause.” Ramirez explained he sold raffle tickets for \$1 each or 7 tickets for 5 dollars. Ramirez said it took approximately 1½ hours, starting after lunch on Fridays, for him to sell the tickets and collect the money. One half of all monies collected was given to a charity [breast cancer research, diabetes research and others], while the other half was given to a single winner drawn at random from the sold tickets. The winning ticket holder’s name was announced over the Company’s public address system. The raffle sales, collections and drawings all took place on Company time. Ramirez alone decided how much to charge for raffle tickets and which charities would receive funds from the raffle sales. Ramirez testified he kept no records on monies taken in or paid out. According to Ramirez, all supervisors knew of the raffle and purchased chances on the raffles.

Ramirez testified that after the Union organizing drive started at the Company he was told to stop moving around the plant. Ramirez testified TBH Foreman Loveless and Plant Manager Houghton told him “several individuals had come forward and said that I had been pushing the Union on them on my tour around the plant selling tickets.” Ramirez said he was told “that as of right now the Friday 50/50 drawing is no more.” A few weeks later the Friday

50/50 raffle was reinstituted with one of the Company owner's wife and the plant manager's wife conducting the raffle. The raffle was sometime thereafter discontinued altogether.

Employee Ivan Webb testified the Friday 50/50 raffle had been ongoing for approximately three to four years and had been started by him and Ramirez. Webb testified he stopped helping Ramirez approximately a year and a half ago when; "[w]e were asked not to go over to Building 2 anymore because of interfering with production, and that was fine, and sales had gotten slow so it was just needed for one of us to do it." Webb had sold raffle tickets to all the supervisors, managers and owners of the Company.

Company President Lutz testified the Friday 50/50 raffle had been around for 3 to 4 years and "was really a mutation of something that was started earlier in the facility." According to Lutz, Ramirez often raised money informally for various causes. Lutz stated Ramirez raised money, for example, when an employee's family member died or suffered a broken limb. Lutz said Ramirez would circulate a card for employees to sign and they could include a donation if they desired. Lutz testified that after one of the supervisor's daughter developed cancer the Friday 50/50 raffle was created, without support from management, but for a good cause.

Lutz stated Ramirez was removed from the Friday 50/50 raffle. Lutz explained it did not take "much time away from the duties of running a facility" initially but "it got to the point where it appeared that too much time was spent on it." Company President Lutz testified two individuals approached him during this time with concerns that the monies collected for the Friday 50/50 raffle and the monies paid out did not match. Lutz testified his wife and an office employee took over the raffle for a couple of months after Ramirez was removed "and interestingly enough the monies immediately doubled and tripled that were coming in every week." Lutz stated too much time and attention was being given to the raffle, as well as concerns raised as to whether it was appropriate even to have the raffle, so it was discontinued all together.

Plant Manager Houghton testified his only involvement, other than contributing to the raffles, was to recommend to Company President Lutz that Ramirez be removed from the raffle because of the "inordinate amount of time" it was taking to conduct the raffle at an extremely busy time for them. Houghton explained it was taking "upwards of an hour and a half or longer to do it at the middle of our prime . . . manufacturing time." TBH Foreman Loveless did not address the Friday 50/50 raffle in his testimony.

2. Discussions Analysis and Conclusion

Did the Company violate the Act when in late September 2004, it removed Ramirez from conducting the Friday 50/50 raffle?

The analytical framework for determining cases, such as this one, that turn on employer motivation, was established in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). First the Government must persuade the Board that

antiunion sentiment was a substantial or motivating factor in the challenged employer conduct. Once this is established, the burden shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity. To meet its burden the Government must demonstrate by preponderant evidence that the employee was engaged in protected activity, that the employer was aware of the activity, that the activity or union affiliation was a substantial or motivating reason for the employer's action, and there was a causal connection between the employer's animus and its adverse action decision.

The Government may meet its *Wright Line* burden with evidence short of direct evidence of motivation. That is, inferential evidence arising from a variety of circumstances such as union animus, timing, or pretext, may sustain the Government's burden. Furthermore, it may be found that where an employer's proffered non-discriminatory motivational explanation is false, even in the absence of direct evidence of motivation, the trier of fact may infer unlawful motivation. Motivation of union animus may be inferred from the record as a whole where an employer's proffered explanation is implausible or a combination of factors support such inference. Direct evidence of union animus is not required to support such an inference.

Government counsel established a prima facie showing the Company removed Ramirez from conducting the Friday 50/50 raffle in late September, because of his union activities. It is clear the Friday 50/50 raffle was started and firmly established by Ramirez. He did so for charitable reasons with full knowledge of the Company's owners, managers and supervisors. Ramirez's participation in the raffle, on company time, each Friday, had been on going for at least 3 if not 4 years. The Friday 50/50 raffle had become a regular part of Ramirez's duties. It appears the hour plus time Ramirez utilized each Friday related to the raffle had not been a problem, even in busy times, until the advent of the Union. It is undisputed that Ramirez, as well as employee Ivan Webb, were active supporters of the Union. Ramirez, for example, had informed Labor Consultant Casale in late September, he was 100 percent for the Union. The Company's antiunion animus is demonstrated, in part, by the unlawful soliciting of grievances or concerns from the employees and then remedying certain of the concerns. I credit Ramirez uncontradicted unrefuted testimony that TBH Foreman Loveless and Plant Manager Houghton told him, "several individuals had come forward and said that [he] had been pushing the Union on them on [his] tour around the plant selling tickets" and "that as of [then] the 50/50 drawing was no more." Although Ramirez denied he was pushing the Union while collecting for the raffle the Company, it appears, assumed he was. The Government established, as outlined above, a causal connection between the Company's demonstrated animus and the action it took against Ramirez of removing him from the Friday 50/50 raffle. I am fully persuaded the Company failed to demonstrate it would have taken the same action it did even in the absence of any protected conduct on Ramirez's part. First, the Company had busy times in the past but never elected to remove Ramirez (or Ivan Webb) from conducting the raffle until their efforts on behalf of the Union. Second, Plant Manager Houghton's testimony that he could not spare his two most senior employees from the department to conduct the raffle was not completely accurate. Ivan Webb had not been assisting with the raffle for an extended period of time prior to Ramirez's removal. Third, Company President Lutz's concern that the monies collected did

not correspond to the monies paid out had never been raised with Ramirez. It appears the Company was struggling for a reason to justify its removal of Ramirez from conducting the Friday 50/50 raffle. These shifting reasons detract from, rather than support, the Company's defense. I reject the Company's contention that conducting the Friday 50/50 raffle did not constitute a benefit to or terms and conditions of employment for Ramirez. I am persuaded over time and with management's tacit, if not express, approval such had become a part of the terms and conditions of Ramirez's employment.

I find the Company's removal of Ramirez from conducting the Friday 50/50 raffle was unlawfully motivated and in violation of Section 8(a)(3) and (1) of the Act.

E. Interrogation, Threats, Removal From Team Leader Position and Negative Evaluation

It is alleged at paragraphs 13, 14 and 15 of the complaint that about November 13 and/or 14, 2004, the Company, by its agent President Lutz, at its Jackson, Michigan facility, coercively interrogated its employee Ramirez with respect to his protected concerted discussions with other employees and with representatives of the Union; and threatened Ramirez with discipline because of his protected concerted activity and/or contact with the Union. It is alleged at paragraphs 17 and 18 of the complaint that about November 12, 2004, the Company by its agents President Lutz, Plant Manager Houghton and TBH Foreman Loveless removed its employee Ramirez from his team leader position and issued him a negative performance evaluation. It is alleged these actions were undertaken to discourage him, and others, membership in a labor organization in violation of Section 8(a)(3) of the Act.

1. Facts

Ramirez served as a team leader in the TBH Department for approximately 3 or more years until on or about mid-November, 2004, at which time he became a machine builder in the department. Throughout this time Ramirez reported to TBH Foreman Loveless. Ramirez testified; "[a]s a team leader I would make sure that everybody's job was running smoothly, help them out with prints, get prints corrected ... chase parts ... [and] ... make sure production kept going in every area" As a team leader Ramirez worked with just about everyone in the shop, however, as a machine builder he basically works at one machine his entire work shift. Ramirez said that as a team leader he was not assigned a specific location in the 100,000 square foot facility which he described as "basically just one big building with different sections." Ramirez said he attended bi-weekly team leader meetings when he was team leader at which safety issues, other problems and concerns, as well as hours the machines would be operating were discussed. Ramirez testified he neither had nor exercised any supervisory authority. Ramirez's assigned section in the TBH Department was in the north corner of the building. Ramirez stated the TBH Department took up 15% to 20%, or less, of the total work area. Ramirez estimated that as team leader he left his section anywhere from 10 to 15 times per work shift but currently as a machine builder seldom leaves the area.

Ramirez testified he spoke with 8 to 10 employees about “unionizing” at the Company before he telephoned the Union in late September 2004, and thereafter met with Union representative Linda Barnes. After his meeting with Barnes, Ramirez and “a few guys from the shop floor decided to get together and have another meeting and proceed from there.” Ramirez testified about 5 or 6 of them decided it was time to act toward organizing the employees and they decided to hand out union fliers at the Company on Friday, October 3, 2004, at 4:30 p.m.. Ramirez testified Plant Manager Houghton notified him at approximately 2:45 p.m., on that Friday, the workforce would be allowed to leave at 3:30 p.m., “because we’d been working so hard and such long hours.” Ramirez first testified it was unusual for the employees to be released at 3:30 p.m. but later acknowledged the work force had been released early on Fridays before. Ramirez explained employees had been working long hours with overtime and because of that he considered the early Friday release on October 3, to be unusual.

Ramirez testified certain individuals (Linda Barnes and a gentleman) handed out fliers at 3:30 p.m. at one of the gates on October 3, 2004. The fliers told about the Union and a Union meeting that was scheduled for the following Sunday. Ramirez openly acknowledged supporting the Union on and at all times after October 3, 2004.

Ramirez testified that about November 11, 2004, he asked TBH Foreman Loveless to arrange a meeting for him with management telling Loveless, he wanted to discuss whether he was going to be paid extra for serving as a team leader over the past 3 years. Loveless reported Plant Manager Houghton was very busy and it would take a day or so before he could, but would, meet with Ramirez. Ramirez testified TBH Foreman Loveless later told him the meeting was arranged and “he had informed management that [Ramirez] wanted to step down because [he] wasn’t getting paid [his] wages.” Ramirez told Loveless; “that’s not what I said.” Ramirez said Loveless responded he “must have misunderstood [him] ... because [Loveless] thought that’s what [Ramirez] wanted.” Ramirez testified that before the meeting, which was scheduled for that Friday, he “bumped” into Company President Lutz in the hallway and asked for a meeting before or after lunch. President Lutz told Ramirez that Plant Manager Houghton was looking for Ramirez to do his evaluation.

Ramirez testified he, shortly thereafter, met with Company President Lutz, Plant Manager Houghton and TBH Foreman Loveless. According to Ramirez as they all sat down Plant Manager Houghton stated, “we accept your resignation as team leader.” Ramirez stated “I never gave you guys one.” Ramirez testified “[Plant Manager Houghton] said that’s not what Doc [TBH Foreman Loveless] said.” Ramirez said he told them “Doc shouldn’t be able to walk in here and quit my job for me.” According to Ramirez, TBH Foreman Loveless responded he thought that was what Ramirez wanted. Ramirez complained that he was not giving his resignation at that time. Ramirez testified that at that time Plant Manager Houghton told him he had not been a team leader for some time that he had not been leading his team. According to Ramirez he was then handed a written performance review and asked to read it. Ramirez told the managers he considered it a negative review and he believed it “was due to [his] Union activities.” Ramirez considered his overall rating 5 of 10 labeled “consistently meets requirements” to be negative. He also considered his rating 5 of 10 labeled “consistently meets requirements” on “adaptability” to be negative. Ramirez

considered his rating 4 of 10 labeled “occasionally meets requirement” on “attitude” as well as the following written notation to be negative:

Gil had done a good job as team leader and had been moving forward in his progress until about 6 months ago. At that time we noticed an attitude of self-importance begin to develop. He is less willing to work the hours requested than in the past. His attitude toward following rules is less cooperative. He now appears to have an agenda that is negatively affecting his productivity and work ethics.

Ramirez testified that the very next work day Plant Manager Houghton and TBH Foreman Loveless asked him to sign a resignation letter. Ramirez declined in a heated exchange saying he wanted to see if his rights had been violated.

Ramirez testified the following day TBH Foreman Loveless asked him to come to the training room because Company President Lutz wished to speak with him. According to Ramirez, Lutz, Loveless and Plant Manager Houghton were present. Lutz handed Ramirez a clip board with a resignation letter on it. Ramirez said he again refused to sign the letter. Ramirez testified Lutz asked him who was telling him not to sign the resignation letter “the Labor Board or the UAW or who.” Ramirez told Lutz he felt he was entitled to more money. Lutz reminded Ramirez he had just received a 4.2 percent raise. Ramirez pointed out everyone else also got that raise. Ramirez told Lutz team leader Chuck Van Sickle had told him that when he was promoted to team leader he got a \$1.00 per hour raise. Ramirez said he explained to Lutz he “was looking into the fairness of getting my dollar if I was entitled to it.” Lutz told Ramirez some promotions did not come with a pay raise. Ramirez wanted to know, “how unfair is that” and asked, “who would take on an added responsibility and that extra work load and be more responsible for things and not expect to get paid for it.” Ramirez testified that when he mentioned team leader Van Sickle’s name that Company President Lutz told Plant Manager Houghton to write Ramirez up for his comments. Ramirez testified the conversation turned to talking on company time. Ramirez said he told Lutz that employee Walt Sanford could go freely around the shop planning anti-union meetings. Lutz instructed Houghton to talk with Sanford about it. Ramirez testified, “I got upset and I said, look at this ... talk to [Sanford], write [Ramirez] up, how fair is that?” Ramirez testified there was then talk about knots in stomachs and things like that from both sides. Ramirez testified Company President Lutz said, “that all he had to do was write me up two more times and I would be gone.” Ramirez said he told Lutz to do what he had to do and left the meeting.

TBH Foreman Loveless testified Ramirez approached him on November 11, 2004, regarding setting up a meeting with Plant Manager Houghton and Company President Lutz “about resigning his team leadership for the reason that they had not paid him for ... being a team leader for three to four years.”

Plant Manager Houghton testified the first he heard of Ramirez resigning his team leader position was when TBH Foreman Loveless told him the day before they met with Ramirez that Ramirez wanted a meeting to resign from his team leader position. Company

President Lutz testified Loveless told him on November 11, 2004, that Ramirez wanted a meeting to resign his leadership position.

Company President Lutz testified Ramirez approached him on Friday, November 12, 2004, and requested a meeting. Lutz told Ramirez he had been so advised by TBH Foreman Loveless the day before and as it just so happened Plant Manager Houghton was at that time looking for Ramirez to set up a meeting. Lutz told Ramirez that Houghton wanted to also give Ramirez his evaluation at the time if that was alright with Ramirez. Lutz testified Houghton was in the process of evaluating everyone in the shop and had just prepared, but had not given, Ramirez his evaluation.

Lutz, Houghton and Loveless met with Ramirez. Lutz told Ramirez he had called the meeting and asked what he wanted to talk about. Lutz testified Ramirez “was upset that as a team leader he had not received his ... team leader pay, [for] ... three to four years ... and ... wanted his team leader pay.” According to Plant Manager Houghton, Ramirez “felt he had never been paid team leader pay, and that if he was not going to be paid team leader pay he did not want the responsibility.” Company President Lutz and Houghton explained there was no “team leader pay and never had been.” Houghton testified Lutz explained that Ramirez had gotten a raise just like everyone else to which Ramirez replied that was not the raise he was talking about. Houghton testified, Lutz said, “there’s nothing you’re entitled to that you haven’t gotten” and told Ramirez, “[i]f you are going to resign your position over the fact that you’re not being paid, that which doesn’t exist, I accept your resignation.” Lutz testified Ramirez “was agitated” and resigned his team leader position.

Company President Lutz testified that after things calmed down Plant Manager Houghton gave Ramirez his evaluation. Plant Manager Houghton testified he had prepared Ramirez’s evaluation on November 4, 2004 and Ramirez was not the only employee being evaluated during that time. Houghton estimated 6 to 12 other employees were also being evaluated. Houghton considered Ramirez’s evaluation to be satisfactory as his overall rating was “meets company expectations and standards.” Houghton specifically denied that any evaluation in the rating was as a result of union activity on Ramirez’s part.

Company President Lutz, Plant Manager Houghton and TBH Foreman Loveless met with Ramirez on Monday, November 15, 2004, to confirm in writing that Ramirez had resigned his team leader position. Ramirez refused to sign anything.

Company President Lutz said they met again with Ramirez on Tuesday, November 16, 2004. Plant Manager Houghton explained that the purpose of these meetings was “to basically confirm in writing the resignation that he had given us the previous Friday.” Lutz explained to Ramirez he had resigned his team leader position and it was confusing why he would not sign an acknowledgement of it. According to Lutz, Ramirez became upset. Lutz testified:

At the beginning of the meeting when I, when again I reviewed the situation that had occurred on Friday, Gilbert’s request for a meeting, my explanation at that meeting that there was no quote/unquote “team leader”

pay, when I reviewed that situation with him on Tuesday the 16th he got very antagonistic. The F-word was flying fast and furious through the room, and I suggested that we needed to calm this thing down and talk like gentlemen. That suggestion was not heeded. The warning was not heeded, and at some point during that agitated discussion, I turned to Mr. Houghton and I said, you know, Ernie, you may have to write Gilbert up for his behavior at this meeting.

Plant Manager Houghton testified Ramirez refused to sign the resignation statement stating he had not resigned and that the three of them were “misstating facts and distorting the truth.”

Company President Lutz specifically denied threatening Ramirez with discipline because Ramirez had spoken to employee Van Sickle. Lutz also specifically denied making any statement to Ramirez to the effect that all he had to do was write Ramirez up two more times and he was gone. Plant Manager Houghton never heard Lutz make any such statement at the meeting.

2. Discussion Analysis and Conclusions

I am persuaded Ramirez told TBH Foreman Loveless that he wanted a meeting with management to resign his team leader position. Ramirez is an individual who by his own admission gets “angry” and “really upset” during some of his meetings with management officials. I am convinced he may, as it appears he did in resigning his as team leader position, later regret or have second thoughts about what he had done in haste or anger. Nevertheless I am fully convinced he went to the meeting on November 12, 2004, with Company President Lutz, Plant Manager Houghton and TBH Foreman Loveless prepared to seek more pay for doing his team leader position or to resign from and not have the responsibilities associated with the team leader position. After being told team leaders were not paid extra Ramirez resigned his team leader position. All those present, Lutz, Houghton and Loveless, testified Ramirez resigned his team leader position. I credit their testimony. Labor Consultant Casale testified Ramirez told her on November 2, 2004, that certain things did not matter regarding whatever his title was because he was not going to be a team leader anymore. Ramirez acknowledges that during conversations regarding the subject of his resignation he had asked who would take on these extra responsibilities and work and not expect to be paid for it. I specifically credit Plant Manager Houghton’s testimony that Ramirez felt he had never been paid team leader pay and if he wasn’t going to be paid he did not want the responsibilities of the position. I credit Company President Lutz’s testimony that when discussing the lack of team leader pay Ramirez was “agitated” and after being asked said he was resigning his team leader position.

As the facts establish that Ramirez was not removed from his team leader position but rather voluntarily resigned I shall dismiss that allegation as set forth in paragraph 17 of the complaint.

There is no complaint allegation that the Company failed to reinstate Ramirez to his team leader position or that the Company unlawfully denied him the right to rescind his

resignation. There is no record evidence of any pattern or practice of the Company with respect to rescinding resignations. While the Company may well have been happy to no longer have Ramirez in a team leader position with ready access to his fellow workers he provided them with that actuality.

Did Ramirez receive a negative evaluation at the November 12, 2004, meeting at which he resigned his team leader position and if so was the evaluation unlawfully motivated? I find it was a wrongfully motivated negative evaluation. Ramirez had not been evaluated in approximately 4 years. I am not unmindful of the Company's explanation that evaluations had not been given for an extended period while it was controlled by a third party. However, I note the Union appears on the scene in later September 2004, and the Company commences evaluating employees again in early November 2004. In the time between late September and early November the Company becomes aware that Ramirez is "100 percent" for the Union. Ramirez was the employee who contacted the Union; he attended a union meeting at which a Company supervisor surveilled specifically observing Ramirez; he was involved with hand billing and storing handbills on an employee's toolbox from which the handbills were collected and trashed by a Company supervisor. It is against this backdrop that Ramirez is given his first review or evaluation in approximately 4 years. Ramirez's most recent evaluation prior to his November 12 evaluation indicated he "consistently exceeds requirements" in all categories namely: quality of work, quantity of work, job knowledge, attendance, punctuality, attitude, acceptability and overall rating. The written comments on his 2000 evaluation reads: "Has done a complete turnaround. Attendance, reliability, and attitude are now positive. Gets along well with his co-workers and is excellent in working with and training new people. Has earned the position of team leader within his department. Definitely an asset to Midbrook with a bright future if he continues moving in his current direction." This 2000 evaluation was signed by Plant Manager Houghton who also gave Ramirez his 2004 evaluation. He was given no negative feed back from the 2000 evaluation until the 2004 evaluation. Ramirez was in fact complemented on his performance during that time. Ramirez's 2004 evaluation however only has him consistently exceeding requirements in 2 areas, consistently meeting requirements in 5 areas, and occasionally meeting requirements in 1 area. The written review states Ramirez had been doing a "good job" until about 6 months before the review when the Company observed "an attitude of self-importance;" "less willing to work the hours requested;" a less cooperative "attitude toward following rules;" and he appeared to "have an agenda that is negatively affecting his productivity and work ethics." While Plant Manager Houghton testified that Ramirez's union activities did not impact his evaluation he acknowledged that Ramirez's challenging policies regarding the Friday 50/50 raffle, signing forms authorizing employee absences and other work related issues were factors. Thus Government counsel established Ramirez engaged in protected conduct of which the Company was aware and took adverse action against him in the form of a negative evaluation which evaluation was admittedly tied directly to his protected conduct.

I find the Company failed to demonstrate it would given Ramirez the evaluation it did on November 12, 2004, absent his protected activities. The Company having failed to support its 2004 evaluation of Ramirez on any valid grounds I infer the negative evaluation was as a result of his protected conduct and as such violates Section 8(a)(1) of the Act. It is no defense

for the Company to demonstrate that Ramirez had negative evaluations in 1998 and 1999. Ramirez explained he was “partying” and “drinking” in those days and he had reformed. A follow up evaluation in 1999 demonstrated he had done just that.

Did Company President Lutz coercively interrogate Ramirez in mid-November 2004? Ramirez testified, without specific contradiction, that on the second occasion when Company President Lutz, along with Plant Manager Houghton and TBH Foreman Loveless, asked him to sign a resignation letter and he refused Lutz asked who was telling him not to sign his resignation letter. Ramirez testified specifically that Lutz asked who was telling him not to sign the resignation letter, “the Labor Board or the UAW or who.” I credit Ramirez’s undisputed testimony.

In determining whether a supervisor’s or agent’s questions to an employee constitute an unlawful interrogation, the Board examines whether, under all the circumstances, the questioning reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 right. *Rossmore House*, 269 NLRB 1176 (1984), *affd.* Sub. Nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). Under this totality of circumstances approach, the Board examines factors such as the background; the nature of the information sought; the identity of the questioner; the place and method of interrogation; and, the truthfulness of the reply. *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964). Strict evaluation of each factor is not required but these indicia serve as a good starting point for assessing the totality of circumstances. Here the Company President is questioning Ramirez in the presence of the Plant Manager and Ramirez’s immediate supervisor regarding who is responsible for causing or persuading Ramirez not to sign his resignation letter. He is being asked whether it is the Union or the government. There is no valid reason for such questioning other than to coerce or intimidate Ramirez. I find as alleged in complaint paragraph 13 that the Company through its President unlawfully interrogated Ramirez with respect to his protected activities in violation of Section 8(a)(1) of the Act.

Did Company President Lutz in mid-November 2004, threatened Ramirez with discipline and discharge because of his protected concerted activities and/or contact with the Union. Ramirez testified that when he told Company President Lutz that team Leader Chuck Van Sickle had said when he (Van Sickle) was promoted to team leader he received a \$1.00 per hour raise that Lutz told Plant Manager Houghton to write Ramirez up for his comments. Ramirez also testified that before he and Company President Lutz, in the presence of Plant Manager Houghton and TBH Foreman Loveless, finished their discussion about team leader pay and talking on company time that Lutz told him all he had to do was write Ramirez up two more times and he would be gone. Company President Lutz specifically denied threatening Ramirez with discipline because Ramirez had spoken with Van Sickle and specifically denied ever saying to Ramirez all he had to do was write him up two more times and Ramirez would be gone. Plant Manager Houghton never heard any such remarks by Lutz.

After observing Ramirez testify, and as explained earlier herein, I am unable to credit his testimony when it is not supported by other testimony or documentation. I credit Lutz’s denials and Houghton’s supporting testimony. Accordingly I shall dismiss the allegations set forth in paragraph 15 of the complaint.

III. Conclusions of Law

By soliciting grievances from employees and promising to remedy them; interrogating employees; confiscating Union literature from an employee's tool box; and surveilling employees gathered for a meeting of the Union the Company violated Section 8(a)(1) of the Act. By removing its employee Ramirez from conducting the Friday 50/50 raffle; and by issuing Ramirez a negative performance evaluation the Company violated Section 8(a)(1) and (3) of the Act.

IV. Remedy

Having found the Company unlawfully removed Ramirez from conducting the Friday 50/50 raffle I recommend the Company be ordered to reinstate the Friday 50/50 raffle and assign Ramirez to conduct same. I leave to the Compliance stage of these proceedings what impact, if any, the Michigan Statutes requiring raffle operators to be licensed may have on this part of the remedy. I likewise recommend the Company be ordered to remove from its files and give no effect to the negative evaluation given to Ramirez on November 12, 2004. I shall also recommend the Company be ordered, within 14 days after service by the Region, to post an appropriate "Notice to Employees" a copy of which is attached hereto as "Appendix" for a period of 60 consecutive days in order that employees may be apprised of their rights under the Act and the Company's obligation to remedy its unfair labor practices.

ORDER⁷

The Company, Midbrook, Inc., it officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Interrogating employees about their union sentiments, surveilling employees gathered for a meeting with the Union, confiscating Union literature from employees' tool boxes and soliciting employee grievances and promising to remedy them in order to discourage employee union activity.

(b) Removing employees from conducting the Friday 50/50 raffle because they support the Union.

(c) Giving employees negative evaluations because of their union activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days of the Board's Order, reestablish the Friday 50/50 raffle and allow Gilbert Ramirez to conduct same and remove from its files the negative evaluation given Gilbert Ramirez on November 12, 2004, and all references thereto.

(b) Within 14 days after service by the Regional Director of Region 7 of the National Labor Relations Board, post at its Jackson, Michigan, facility copies of the attached notice marked "Appendix."⁸ Copies of the Notice, on forms provided by the Regional Director for Region 7 after being signed by the Company's authorized representative shall be posted by the Company and maintained for 60 consecutive days in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced or covered by any other material. In the event that during the pendency of these proceedings the Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the Notice to Employees, to all employees employed by the Company on or at any time since late September 2004.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 of the National Labor Relations Board sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Company has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C.

William N. Cates
Associate Chief Judge

⁸ If this order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading, "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read: "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by the Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interrogate our employees concerning their union activities, surveil their union meetings and/or confiscate their union literature.

WE WILL NOT solicit grievances from our employees and promise to remedy them in order to discourage employees from supporting the Union.

WE WILL NOT remove employees from conducting our Friday 50/50 raffle or issue negative performance evaluations to them because they support the Union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL reestablish our Friday 50/50 raffle and allow Gilbert Ramirez to conduct the Friday 50/50 raffle and **WE WILL** remove from Gilbert Ramirez's records the negative performance evaluation given him on November 12, 2004, and any reference thereto.

Midbrook, Inc.
(Employer)

Dated:_____ **By:**_____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

477 Michigan Avenue, Federal Building, Room 300, Detroit, MI 48226-2569
(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, (313) 226-3244